

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7103 PCB CCJP 09-01 Mental Health
SPONSOR(S): Criminal & Civil Justice Policy Council, Snyder
TIED BILLS: **IDEN./SIM. BILLS:** SB 2018

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Criminal & Civil Justice Policy Council	12 Y, 0 N	Crocker	Havlicak
1)	Human Services Appropriations Committee		Massengale	Massengale
2)	Full Appropriations Council on General Government & Health Care			
3)				
4)				
5)				

SUMMARY ANALYSIS

This bill is based on a plan developed by a statewide task force, convened by the Supreme Court of Florida and consisting of representatives from all three branches of government, as well as leaders from the mental health, substance abuse, and criminal justice fields. It allows the Department of Children and Family Services (DCF) to identify demonstration sites to develop community-based service capacity and support the implementation of redesigned, evidence-based service delivery models targeting individuals with severe mental illnesses and/or substance abuse disorders involved in or at risk of becoming involved in the criminal justice system. Key elements of the bill include:

- A community substance abuse and mental health system targeting individuals at highest risk of involvement in the criminal justice, juvenile justice, and state mental health systems to ensure adequate services in times of acute need when at risk of penetration into institutional levels of care and maximizing limited state resources during periods of relatively stable recovery;
- Strategies to increase access to federal entitlement benefits, such as Social Security benefits and Medicaid, that may be used to offset costs currently paid for exclusively through the use of state general revenue dollars;
- Incorporation of newly designed performance and accountability standards to ensure that providers and communities are qualified to deliver effective, high-quality services across systems of care to individuals at highest risk of becoming involved in the criminal justice system or other institutional levels of care;
- Development of collaborative working relationships among state and local criminal justice and community stakeholders to facilitate early intervention and continuity of care across systems;
- Establishment of a partnership between DCF and the Agency for Health Care Administration (AHCA) to maximize funding streams and opportunities to serve individuals covered under public entitlement benefits (i.e., Medicaid), as well as those not covered; and
- Expansion of the Criminal Justice, Mental Health, Substance Abuse Reinvestment Grant Program to build local and statewide infrastructures.

Fiscally, it appears that this bill will produce a lower demand for costly services in jails, emergency rooms and other crisis settings. The cost to state government, however, to implement the home and community based services waiver and to monitor community residential facilities that are designated for justice-involved individuals with a serious and persistent mental illness is estimated to be \$34,745 in general revenue funds for Fiscal Year 2009-10; \$5,039,659 for Fiscal Year 2010-11 and \$5,703,973 for Fiscal Year 2011-12. In addition, individuals who take the Forensic Evaluator Training course must pay a fee for the training, estimated to be approximately \$445 per person (see Fiscal Analysis section).

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2007, the Florida Supreme Court published a report entitled *Mental Health, Transforming Florida's Mental Health System*. According to the report, on any given day in Florida, there are approximately 17,000 prison inmates, 15,000 local jail detainees, and 40,000 individuals under correctional supervision in the community who experience serious mental illnesses. Annually, as many as 125,000 adults with mental illnesses and/or substance use disorders requiring immediate treatment are arrested and booked into Florida jails. Of the 150,000 children and adolescents who are referred to Florida's Department of Juvenile Justice every year, more than 70 percent have at least one mental health disorder.

Further, the report states that, the State of Florida currently spends roughly a quarter of a billion dollars annually to treat roughly 1,700 individuals under forensic commitment; most of whom are receiving services to restore competency so that they can stand trial on criminal charges and, in many cases, be sentenced to serve time in state prison. All of this treatment is funded entirely by state general revenue funds, because federal law prohibits Medicaid from providing payment for psychiatric services rendered in such institutional settings. Thus, the state is investing enormous sums of taxpayer dollars into costly, back-end services that may render a person competent to stand trial, but will do nothing to provide the kind of treatment needed to facilitate eventual community reentry and reintegration.

The report went on to list various recommendations to improve Florida's mental health and substance abuse system, reduce recidivism, increase public safety, and increase spending efficiency. This bill seeks to enact some of the recommendations.

Community Mental Health and Substance Abuse Treatment and Crime Reduction Act

This bill creates the Community Mental Health and Substance Abuse Crime Reduction Act in section 394.9086, Florida Statutes. The Act includes legislative intent and seven specific goals for the new program. Goals include the following:

- Ensure that forensic competency restoration services are provided in the least restrictive, least costly, and most effective environment;
- Provide competency restoration services in the community when appropriate, based on

consideration of public safety, needs of the individual and available resources;

- Reduce admissions for competency restoration to state forensic mental health treatment facilities;
- Reduce rates of arrest, incarceration, and re-incarceration for persons in the program;
- Ensure public safety;
- Increase outreach and services to individuals at risk of criminal justice system, juvenile justice system and forensic mental health system involvement; and
- Support collaboration among local law enforcement, judicial, and correctional stakeholders implementing diversion and problem-solving strategies that will reduce the demand for forensic mental health placement.

The bill adds definitions, including defining what constitutes “best practices,” what a “community forensic system” is, what “evidence-based practices” are, among other things.

In the bill a Service System is defined as “the Department, in consultation with the agency, shall develop and implement a community mental health and substance abuse forensic treatment system. The community forensic system must build on local community diversion and reentry initiatives and strategies that are consistent with those identified and supported under s. 394.658(1).” Examples of initiatives and strategies include:

- Mental health courts;
- Diversion programs;
- Alternative prosecution and sentencing techniques;
- Crisis intervention teams;
- Specialized training for criminal justice, juvenile justice, and treatment service professionals;
- Specialized probation officer at the state and county levels to serve individuals under correctional control in the community;
- Collateral services such as supported, transitional, and permanent housing, and supported employment; and
- Reentry services and supports for affected individuals.

Further, this bill dictates that the community forensic treatment system must include a comprehensive continuum of care and services that use evidence-based and best practices to address co-occurring mental health and substance abuse disorders. The system must include, at a minimum, the following services and elements:

- Competency-restoration and treatment services provided in a variety of settings from least restrictive to progressively more restrictive settings;
- Forensic intensive care management;
- Supported housing;
- Supported employment;

- Medication management;
- Trauma-specific services;
- Residential services;
- Treatment for co-occurring mental health and substance abuse disorders;
- Outreach and education; and
- The utilization of involuntary outpatient placement for individuals meeting the criteria under section 394.4655, Florida Statutes, and conditional release for individuals adjudicated incompetent to proceed because of mental illness or not guilty by reason of insanity, as provided by law, as well as other services or support as identified.

Eligibility for these services is dictated in a prioritized list. The list provides that these following individuals are eligible:

- Adults who are adjudicated incompetent to proceed or not guilty by reason of insanity, whose current most serious charge is a felony of the third degree or a felony of the second degree if the felony did not involve violence, and who meet public safety criteria established by the court and treatability criteria established by the department for placement in a community setting;
- Adults who experience serious and persistent mental illnesses re-entering the community from state prisons;
- Adults who have been committed to a state forensic mental health treatment facility after being adjudicated incompetent to proceed or not guilty by reason of insanity, and are released or are pending release to the community by the court after completing competency restoration services or being found to no longer meet the criteria for continued commitment placement;
- Adults who experience serious and persistent mental illnesses, who have a history of involvement in the justice system, or who are at risk of entering or are already involved with the criminal justice system; and
- Children deemed incompetent to proceed under section 985.19, Florida Statutes.

The bill directs the DCF to develop a continuum of services to implement the Act, specifically directing them to:

- Define requirements for all providers in the community forensic system;
- Select demonstration sites, if appropriations are available, which demonstrate active and sustained participation in community collaborations;¹
- Enter into memorandums of agreement with county planning councils or committees;
- Identify providers to implement the continuum of services, in consultation with county planning councils or committees;
- Establish performance measures and reporting requirements for providers, including, at a minimum:

¹ Discussed in more detail *infra*.

- The number of individuals diverted from state forensic mental health treatment facilities;
 - The number of individuals diverted from the criminal justice system;
 - The rates of arrest, incarceration, and re-incarceration for new criminal offenses;
 - The rates of employment; and
 - The annual number of days in a crisis stabilization unit, detoxification facility, short-term residential treatment program, state civil mental health treatment facility, or state forensic mental health treatment facility; and
- Monitor contracts for compliance with terms.

The bill provides that in implementing the Act, DCF, in consultation with the Agency for Health Care Administration (AHCA), may identify three pilot sites. The pilot sites must be located in the Northwest, Southern, and Tampa Bay areas of the state for initial implementation. The areas must be selected based on findings of community readiness and the potential for affecting the greatest number of individuals entering the mental health and criminal justice systems. Included among the criteria for selecting an area are: community readiness, a high bed-utilization rate, successful application for implementation grant funding under the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program, and other elements.

Criminal Justice, Mental Health, and Substance Abuse Policy Council

Currently, the Criminal Justice, Mental Health, and Substance Abuse Policy Council is established under section 394.655(11), Florida Statutes. The council's purpose is to align policy initiatives in the criminal justice, juvenile justice, and mental health systems to ensure the most effective use of resources and to coordinate the development of legislation relating to various mental health needs.

This bill requires the council to align policy initiatives in the substance abuse systems. The bill also would include as a purpose of the council to provide consultation in the development of comprehensive and cost-effective community-based mental health and substance abuse treatment services. The Council would be required to appoint an advisory committee to review and monitor the implementation of the Act, and the committee would be required to include at least one person who has received services and one family member of a person who has received services under the section.

Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program

This bill specifies that, in implementing the Community Mental Health and Substance Abuse Treatment and Crime Reduction Act, DCF and ACHA will work in coordination with counties that received grants under the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program² to develop local treatment and service delivery infrastructures.

County Planning Councils or Committees

Each board of county commissioners is required to designate a county public safety coordinating council or another criminal or juvenile justice mental health and substance abuse council or committee, under section 394.657, Florida Statutes. This bill amends the duties of that council to include consulting with local governing bodies when planning or implementing the Act.

Criminal Justice, Mental Health, and Substance Abuse Technical Assistance Center

² Created in s. 394.656, F.S., the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program is tasked with providing funding to counties with which they can plan, implement, or expand initiatives that increase public safety, avert increased spending on criminal justice, and improve the accessibility and effectiveness of treatment services for adults and juveniles who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders and who are in, or at risk of entering the criminal or juvenile justice systems.

Under the bill, the Technical Assistance Center at the Louis de la Parte Florida Mental Health Institute at the University of South Florida is tasked with, along with its existing duties, coordinating with DCF to develop minimum competencies/proficiencies for communities and providers, identify evidenced-based/best practices and deliver training and consultation to service providers. In addition, the Technical Assistance Center will assist DCF in developing outcome measures and provide an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Florida Supreme Court, and the State Courts Administrator.

Optional Medicaid Services

This bill provides that, subject to specific appropriations, AHCA may seek a federal state plan amendment to implement home and community-based services for individuals that have disabilities that cause them to become, or put them at risk of becoming, involved in the criminal justice system because of their mental illness. Eligible individuals may have incomes up to 105 percent of the federal poverty level.

ACHA may disenroll from enrollment in MediPass,³ or any capitated or other Medicaid managed care arrangements, those individuals receiving services under this subsection.

Enrollment in state plan services may not exceed 1,000 individuals unless additional approval is obtained from the Legislature. Since this legislation includes adults and juveniles, allowing services to be provided to greater than 1,000 individuals would be optimal. In addition, after July 1, 2012, ACHA may capitate Medicaid behavioral health services under this subsection.

Cost Effective Purchasing of Health Care

Section 409.912, Florida Statutes, is amended to exempt any persons who have serious and persistent mental illnesses, who are receiving services under the Act, and who are eligible for and receiving services under the state plan implemented under section 1915i of the Social Security Act, as approved by the Centers for Medicare and Medicare Services, from MediPass and managed care plans authorized under chapter 409 (Florida's Social and Economic Assistance statutes).

Rights of Forensic Clients

This bill adds to the rights of forensic clients under section 916.107(3), Florida Statutes, who have been receiving psychotherapeutic medication at a jail at the time of transfer to a state forensic mental health treatment facility who lacks the capacity to make an informed decision regarding mental health treatment, the ability of the admitting physician to order a continuation of psychotherapeutic medication if, in the physician's judgment, abrupt cessation of the medication could cause a risk to the health and safety of the client during the time a court order to medicate is pursued.⁴

Training of Mental Health Experts and Appointment of Experts

The evaluation of defendants for competency to proceed or sanity, subsequent to a felony offense must be conducted by mental health experts who apply uniform criteria based on the Florida Rules of Criminal Procedure. Chapter 916.111, Florida Statutes, provides the authority and guidance for the development of training for mental health experts to complete the forensic evaluations.

The court appoints the experts who conduct the forensic evaluations. Since the late 1980s, DCF has maintained a list of evaluators for the court to choose from who have completed forensic evaluator

³ The Medicaid Provider Access System (MediPass) is a primary care case management program for Medicaid recipients developed and administered by Florida Medicaid. MediPass was established in 1991 to assure adequate access to coordinated primary care while decreasing the inappropriate utilization of medical services. In MediPass, each participating Medicaid recipient selects or is assigned a health care provider who furnishes primary care services, 24-hour access to care and referral and authorization for specialty services and hospital care. The primary care provider is expected to monitor appropriateness of health care provided to their patients. See generally <http://ahca.myflorida.com/Medicaid/MediPass/index.shtml>.

⁴ Under s. 916.107, F.S., which would be amended by this bill, an administrator or designee of a mental health facility is required to petition for a court order authorizing necessary and essential treatment for a client, if a client refuses treatment.

training. This list is required to be given to the courts annually. Current statute specifies “to the extent possible” the appointed experts shall have completed the forensic evaluator training. Therefore, statute does not mandate that experts performing evaluations must complete the training. In addition, the law does not specify how long an expert may remain on the list of evaluators before they are required to retake the training.

The bill requires the forensic evaluator training to take place, at least, annually. In addition, beginning July 1, 2010, mental health experts who wish to be on the forensic evaluator list must take the training at least once in every five years. Those who have not completed the training within this time frame will be removed from the registry. The bill also clarifies that all experts appointed by the court must have completed the forensic evaluator training in the previous five years.

Transport and Hearings for Forensic Residents

Current statute does not require a timeframe for transporting an individual back to jail or scheduling and holding the court hearing for individuals whose competency has been restored or no longer meet criteria for commitment. However, Florida Rules of Criminal Procedure⁵ requires the court to hold a hearing to determine if the defendant continues to be incompetent within 30 days of the receipt of a report from the department. When delays occur in the transporting of defendants and the scheduling of competency hearings, the department is unable to make these forensic beds available to new defendants who have been committed by the court and are waiting on placement.

The bill amends sections 916.13 and 916.15, Florida Statutes, to require the sheriff to transport a defendant who has been involuntarily committed due to mental illness or not guilty by reason of insanity back to jail to await a competency or commitment hearing within 30 days of the court receiving the department’s report. The bill also requires a court hearing to be scheduled and occur within 45 days of the court receiving the report. The purpose of these requirements is to improve timely movement of defendants out of treatment facilities and back to the court system.

Conditional Release⁶

The bill requires the court to place individuals who meet the criteria for involuntary commitment under section 916.13, Florida Statutes, in a community residential facility for competency restoration if their current most serious charge is a third degree or second degree non-violent felony. These placements are limited to the demonstration site areas created under the Act. The court will not place individuals in the community for competency restoration if bed space or funding is not available in the demonstration site area or if the court makes a finding that the individual cannot be safely placed in the community. The bill provides criteria for the court to use in making the findings related to safe placement of the individual.⁷ The effect of this proposal is to use community services for competency restoration when appropriate.

Incompetency in Juvenile Delinquency Cases

Current law provides that the basis for determinations of juvenile competency must be specifically stated in an evaluation of the child’s mental condition. This bill requires the determination to be conducted in such a way as to ensure uniform application of the criteria enumerated in Rule 8.095, Florida Rules of Juvenile Procedure. Further, the bill would require experts appointed by the court to determine juvenile competency to have completed forensic evaluator training approved by the DCF within five years prior to conducting evaluations for the court, and each expert must be a psychiatrist or

⁵ Fla. R. Crim. Pro. 3.212(c)(6).

⁶ s. 916.17, F.S.

⁷ Including consideration of all of the following: the nature and seriousness of the crime allegedly committed, the individual’s criminal history, the individual’s psychiatric history, the individual’s history of violent behavior or threats of violent behavior and risk of harm to self or others, the likelihood that the individual will comply with and benefit from the mental health treatment and services being recommended, the availability of appropriate community-based services and treatment settings, and other information considered relevant by the court.

licensed psychologist. This bill provides for removal from the DCF's registry if the expert does not comply with the training requirements.

B. SECTION DIRECTORY:

Section 1 creates s. 394.9086, F.S., relating to the Community Mental Health and Substance Abuse Treatment and Crime Reduction Act.

Section 2 amends s. 394.655, F.S., relating to the Substance Abuse and Mental Health Corporation.

Section 3 amends s. 394.656, F.S., relating to the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program.

Section 4 amends s. 394.657, F.S., relating to county planning councils or committees.

Section 5 amends s. 394.659, F.S., relating to the Criminal Justice, Mental Health, and Substance Abuse Technical Assistance Center.

Section 6 amends s. 409.906, F.S., relating to optional Medicaid services.

Section 7 amends s. 409.912, F.S., relating to cost-effective purchasing of health care.

Section 8 amends s. 916.107, F.S., relating to rights of forensic clients.

Section 9 amends s. 916.111, F.S., relating to training of mental health experts.

Section 10 amends s. 916.115, F.S., relating to appointment of experts.

Section 11 amends s. 916.13, F.S., relating to involuntary commitment of defendants adjudicated incompetent.

Section 12 amends s. 916.15, F.S., relating to involuntary commitment of defendants adjudicated not guilty by reason of insanity.

Section 13 amends s. 916.17, F.S., relating to conditional release.

Section 14 amends s. 985.19, F.S., relating to incompetency in juvenile delinquency cases.

Section 15 provides for an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Agency for Health Care Administration, the Medicaid State Plan Amendment option creating the home and community based services proposed under this legislation will reimburse providers through Medicaid fee-for-service, bypassing significant utilization management processes. If federal approval of the waiver is granted, the agency estimates the cost of the home and community-based services at \$12,453 per person per year, for up to 1,000 individuals. This is the current cost of services under the Florida Assertive Community Treatment (FACT) program and is expected to be comparable. The home and community-based services option cannot be implemented by July 1, 2009, as it requires federal approval of a State Plan Amendment. Approximately one year will be needed to obtain approval from CMS, which will delay

implementation at least until July 1, 2010. One FTE position responsible for services and program development will be needed by July 1, 2009.

In addition, the agency does not have appropriately trained staff or regulatory authority to monitor community residential facilities that are designated for justice-involved individuals with a serious and persistent mental illness. Medicaid will require two new Medical Health Care Program Analyst (PG 24) positions to implement this new initiative.

The positions will be funded 50 percent General Revenue and 50 percent Medicaid for all fiscal years. For Fiscal Year 2010-11, funding will be 39.65 percent General Revenue and 60.35 percent Medicaid for additional Home and Community Based Services; Fiscal Year 2011-12 is estimated to be 45.02 percent General Revenue and 54.98 percent Medicaid.

	FY 09-10	FY 10-11	FY 11-12
Salaries/Benefits (3FTE)	\$56,768	\$170,304	\$170,304
Expenses			
Recurring (including travel)	\$7,909	\$23,757	\$23,757
Nonrecurring	\$3,412	\$6,824	
OCO	\$1,000	\$2,000	
Human Resources Services	\$401	\$1,203	\$1,203
Home & Community Based Services Waiver		\$12,453,000	\$12,453,000
TOTAL	\$69,490	\$12,657,088	\$12,648,264
General Revenue Fund	\$34,745	\$5,039,659	\$5,703,973
Medical Care Trust Fund	\$34,745	\$7,614,429	\$6,944,291

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

DCF “[a]nticipate[s] . . . lower demand for costly services in jails, emergency rooms and other crisis settings, less crime, enhanced public safety, fewer injuries to law enforcement officers, and decreased rates of chronic homelessness.”

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to DCF, “individuals who are required to take the Department-approved Forensic Evaluator Training course in order to be placed on the forensic evaluator registry must pay a fee for the training, estimated to be approximately \$445 per person.”

D. FISCAL COMMENTS:

See Drafting Issues or Other Comments section.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Page 18, lines 493-499 of the bill states: “Persons . . . are exempt from MediPass and managed care plans authorized under this chapter, including capitated managed care plans authorized under s. 409.91211.” The language in this subsection conflicts with language found on pages 15 and 16, lines 418-421, of the bill which states: “The agency may disenroll from enrollment in MediPass, or any capitated or other Medicaid managed care arrangements, those individuals . . .”

If the intent of the bill is to prevent the specified individuals from enrolling in Medicaid managed care (MediPass or a managed care plan), the language (on page 15, line 418) should be revised to specify that this population is *exempt* from Medicaid managed care as authorized under chapter 409, Florida Statutes.

For either the “may disenroll” or the “are exempt” language included in the bill, the agency would need to amend the 1915(b) Managed Care Waiver and the 1115 Medicaid Reform Waiver to exempt all recipients specified in the bill from enrollment in these managed care waivers. According to the Agency for Health Care Administration, this change could potentially impact the cost-effectiveness of the 1915(b) Managed Care Waiver and the budget neutrality of the 1115 Medicaid Reform Waiver. The agency would need to amend all health plan contracts to exempt recipients of these community-based services from enrollment in the plans.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 24, 2009, the Criminal & Civil Justice Policy Council adopted an amendment which increased the number of days that an incompetent or insane defendant had to be transported back to jail after the defendant had been deemed competent or no longer met the criteria for involuntary commitment from 15 days to 30.